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NO. 82-249

In the Supreme Court of the United States

OCTOBER TERM, 1982

CENTURY FOREST INDUSTRIES, INC.,
Petitioner

VS.

DURAWOOD TREATING COMPANY, DIVISION OF ROY O. MARTIN LUMBER COMPANY, INC.,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The question which the Petitioner asks the Court to consider is whether the United States Court of Appeals for the Fifth Circuit erroneously interpreted the Texas Statute of Frauds encompassed in Vernon's Annotated Texas Civil Statutes, Business and Commerce Code, Section 2.201(a) and 2.201(b).

LIST OF INTERESTED PARTIES

The Parties involved in this proceeding are:

CENTURY FOREST INDUSTRIES, INC., Petitioner

and

DURAWOOD TREATING COMPANY, DIVISION OF ROY O. MARTIN LUMBER COMPANY, INC., Respondent

TABLE OF CONTENTS

Page

Question Presented i
List of Interested Parties ii
Table of Contents iii
Table of Authorities iv
Statement of the Case 1
Summary of Argument 2
Argument 3
Conclusion 5
Certificate of Service 6

TABLE OF AUTHORITIES

Case	Page
Butner v. United States, 440 U.S. 48, 58 (1979)	3
Commissioner v. Bosch, 387 U.S. 456 (1967)	3
Court v. Ash, 422 U.S. 66 (1975)	3
Ragan v. Merchants Transfer & Warehouse Co., 337 U.S. 530 (1949)	3
Ruhlin v. New York L. Ins. Co., 304 U.S. 202, 206 (1938)	4
United States v. Durham Lumber Co., 363 U.S. 522 (1960)	3

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STATEMENT OF THE CASE

This case is a diversity case involving a contract dispute. The statement of the case presented by the Petitioner is generally accurate. However, Respondent wishes to point out that the testimony in this case, as is reflected in the transcript, reveals that Petitioner is in error when it states that, "...nothing took place concerning this matter for several months." The transcript reveals that the vice

president of the Respondent had more than one conversation with officers of the Petitioner between the time the initial contract was made and the time the contract was repudiated by the Petitioner.

SUMMARY OF ARGUMENT

Respondent respectfully submits that the Petition for Writ of Certiorari should not be granted in this case because this involves nothing more than an interpretation of the law of Texas by the United States District Court for the Eastern District of Texas, as well as the United States Court of Appeals for the Fifth Circuit, and an application of Texas law to the facts of this particular case.

ARGUMENT

The Petitioner in this case is seeking to have the Court review, and apparently ultimately overrule, a decision of the United States Court of Appeals for the Fifth Circuit which affirms a decision of the United States District Court for the Eastern District of Texas. This decision found that the parties entered into a contract which was legally enforceable under Vernon's Annotated Texas Civil Statute Section 2.201(b). Historically, the Court has been very reluctant to spend its time examining District and Circuit Court opinions interpreting the laws of a particular state in diversity cases. This is because,

> "The Federal Judges who deal regularly with questions of state law in their respective districts

> and circuits are in a better position than we to determine how local Courts would dispose of comparable issues."

Butner v. United States, 440 U.S. 48, 58 (1979). For this reason, this Court normally accepts a determination of local law by a Court of Civil Appeals, and does not disturb it. *Commissioner v. Bosch*, 387 U.S. 456 (1967); *Ragan v. Merchants Transfer & Warehouse Co.*, 337 U.S. 530 (1949). *See also, Court v. Ash*, 422 U.S. 66 (1975); *United States v. Durham Lumber Co.*, 363 U.S. 522 (1960).

Petitioner suggests to the Court that this writ should be granted because there is an alleged conflict between the Circuits. However, conflicts between the Circuits involving cases interpreting state law do not necessarily indicate an actual conflict in the law itself. Obviously under our system of federalism, each state is free, within the confines of the Constitution of the United States, to pass and interpret such laws as it sees fit. Indeed the state of Texas is perfectly free to completely abolish the Statute of Frauds if it so chooses. This Court has recognized that an apparent conflict in decisions among the Circuits in cases involving diversity jurisdiction did not necessarily show a true conflict existed. In *Ruhlin v. New York L. Ins. Co.*, the Court stated,

> As to questions controlled by state law, however, conflict among Circuits is not of itself a reason for granting a writ of certiorari. The conflict may be merely corollary to a permissible difference of opinion in the state Courts.

304 U.S. 202, 206 (1938).

CONCLUSION

In summary, Respondent submits that the Petition for Writ of Certiorari should not be granted in this case. This case involves the interpretation of Texas law by a United States District Court sitting in Texas, and by the Circuit Court of Appeals having jurisdiction of appeals from that District Court. There is no reason to think that these Courts failed to interpret the law correctly, or failed to properly apply it to the facts of this case. This Court has better things to do with its valuable time than reexamine a case such as this on the merits.

Dated September _____, 1982.

Respectfully submitted,

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BY: _____
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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari has been mailed to Mr. James R. Cornelius, Jr., P.O. Drawer 1728, Lufkin, Texas 75901, and to Flournoy, Deaton & Stephens, P.O. Box 1546, Lufkin, Texas 75901, by placing same in the United States mail, postage prepaid, on this the _____ day of September, 1982.

_____

TOMMY ALLISON